



What is the difference between a grant, 'service level agreement' and a contract?

A commissioning process can result in various types of formal agreement. Most organisations are used to receiving grants (including terms and conditions of a grant) and many have been involved with service level agreements with government funders - which can be similar to contracts. The difference between grant agreements and contracts is becoming increasingly blurred. This can be quite confusing for voluntary and community organisations, but it is important to be aware of some of the main differences.

Some of the main features of a grant are:

- Funding is given to an organisation in order to enable them to provide a service to their beneficiaries/service users
- An organisation can give a grant back to the funder
- If an organisation does not provide the service it received funding for, the funder can ask for all or part of the grant to be returned but the organisation does not have to pay any additional compensation to the funder
- No VAT is payable

Some of the main features of a contract are:

- An organisation provides a service (or goods) to a PSO in return for payment (i.e. the PSO is buying a service from the organisation)
- A contract is legally binding for both the organisation providing the service and the PSO buying the service
- If an organisation fails to deliver the services (as outlined in the contract) the PSO can demand compensation for any financial losses it suffers due to the service not being delivered
- An organisation may have to charge VAT

A 'service level agreement' (SLA) outlines what is required in a service (usually including targets and standards of delivery) and the basis for payment. There is a lot of confusion about service level agreements; they can be linked to a grant or be more like a contract.

It is very important to understand any agreement your organisation enters into – before signing, get legal advice.

Trading issues

If your organisation delivers a service as part of a contract, this will be considered to be 'trading'. Before tendering to deliver the service, it is important to consider the legal implications of this for your organisation, especially if it is a registered charity.

Issues to consider:

- Does your organisation's governing document (constitution or Memorandum and Articles of Association allow it to carry out trading activities? It is important to check this document; your organisation may need to make changes.
- Does the service you are tendering for fit with main purpose of your organisation? Under Charity Law, charities can do some trading if the activity contributes to achieving the 'primary purpose' of the organisation. If not, the organisation may need to consider setting up a separate trading subsidiary (a non-charitable company which is linked to the charity, often called a 'trading arm'.)
- Does your organisation need to pay or charge VAT? VAT is a complex area so it is a good idea to get advice about this.

It is very important to ensure that any trading you do meets the requirements of Charity Law; if you break the law, your trustees could be liable to pay taxes or to meet the cost of any financial losses that you suffer. Please see Charity Commission guidance CC35 Charities and Trading and CC47 Charities and Contracts available at www.charity-commission.gov.uk

Tendering as part of a partnership or consortium

One option for smaller organisations that want to gain access to government funds available through commissioning and procurement is to get involved in a partnership or consortium. Another option is to be sub-contracted by a bigger organisation.

These options may be more realistic for smaller organisations that are not ready or able to take on a contract themselves. Also, many commissioners want to reduce the number of service providers they have to deal with (and tenders they have to assess and contracts they have to manage), so they are encouraging consortium tenders where they can deal with one lead partner.

Many people think of partnership working as working together with other organisations in an informal way. In order to tender to deliver a service with one or more other organisations, a formal partnership or consortium is necessary (including a formal partnership/consortium agreement).

A consortium is a type of formal partnership between several organisations. Commissioners use the word 'consortium'.

Various models are possible:

1. Two or more organisations of different sizes form a consortium and tender for contracts together; one organisation (not necessarily the largest one) will take on the lead contractor role – this tends to involve more of a partnership of equals. They deliver the service together.
2. One large organisation tenders for a contract, then sub-contracts to several small organisations who deliver different parts of the service.
3. A group of organisations sets up a new organisation in order to tender for contracts.

Partnerships and consortia take time to develop and success depends on building good relationships between partners; it is important to start the process well before deciding to tender for a contract.

For more information about developing partnerships and consortia:

- WRC's Guide to Partnerships
http://www.wrc.org.uk/resources/help_for_your_organisation/developing_your_organisation/sustainable_funding_resources.aspx
- BASSAC website (Collaboration Project) www.bassac.org.uk